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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057

7590 04/10/2006
David B Cochran
Jones Day Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, OH 44114

EXAMINER

KARMIS, STEFANOS

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/611,054	Applicant(s) GRAY ET AL.	
	Examiner Stefano Karmis	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☒ Claim(s) 1-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following communication is in response to Applicant's amendment filed 11 January 2006.

Status of Claims

2. Claims 1, 14, 19 and 32 are originally filed. Claims 2-13, 15-18, 20-31 and 33-36 are previously presented. Therefore claims 1-36 are currently pending.

Summary of this Office Action

3. Applicant's arguments, filed 11 January 2006, with respect to claims 1-36 have been fully considered and are not persuasive. Therefore claims 1-36 stand rejected as discussed below.

Claim Objections

4. Claims 1-36 are objected to because of the following informalities: Claims 1 and 19 contain the term "said fixed amount of utility." There is a lack of antecedent basis for this term. It appears that the terms is referring to the "adjustably fixed amount of utility" previously mentioned. However it is unclear if the "said fixed amount of utility" is the same as the "adjustably fixed amount of utility." Claims 2-18 and 20-36 stand objected to based on their dependency to claims 1 or 19. Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 19 recites “a broker in communication.” The broker is a human being. If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter. See MPEP 2105.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 19 contain the term “adjustably fixed amount of utility.” This term renders the claim indefinite because it is unclear whether the utility is fixed or whether the utility can be adjusted. Without such clarification, the metes and bounds of the claim are confusing. Claims 2-18 and 20-36 stand objected to based on their dependency to claims 1 or 19.

Also, claim 19 recites in the preamble “A system for service allocation among a plurality of entities requiring service allocation in a communications or computing environment

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comprising.” The body of the claim does not contain any limitations indicating the structure of the device. A system or an apparatus claim should always claim the structure or the hardware that performs the function. Further, a review of the specification reveals numerous references to agents role in supplying the services, however there is no mention of such agents in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Delp et al. (hereinafter Delp) in view of Johnson et al. (hereinafter Johnson) U.S. Patent 6,005,925.

Regarding claims 1 and 19, Applicant asserts that Delp fails to teach endowing one or more bidding entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources. Applicant acknowledges that Delp teaches a low threshold to which a guaranteed amount of resources is received from the dedicated resource

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pool (column 1, lines 57-66). Interpreting this limitation as broadly as reasonable possible encompasses a “measure representative of the possibility of failure due to lack of resources.” By having a low threshold, the entity is establishing a guaranteed minimum, which acts as a 0% chance of failure. Delp also teaches an embodiment in which both a user charge (Ni) and an importance factor (Fi) are taken into account when redistributing available resources from the shared resource pool. If the resource flow is smaller than the importance factor, then the entities receive resources based on their importance factor (column 5, lines 06-39). Applicant has similar teachings of considering an entities importance when distributing resources in the specification. For these reasons, Delp’s teachings are sufficient when interpreting the limitation “fixed amount of utility is a measure representative of the possibility of failure due to lack of resources” as broad as reasonably possible. Clarification of this limitation in claim 1 and claim 19 would be advantageous for advancing prosecution.

Allowable Subject Matter

11. Claims 13 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Moskowitz et al., U.S. Patent 7,007,166 (column 32, line 22, thru column 33, line 34).

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
30 March 2006



HANI M. KAZIMI
PRIMARY EXAMINER